

***United States Court of Appeals
for the Second Circuit***



APPENDIX

NO. 75-4237

United States Court of Appeals FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

and

SPERRY SYSTEMS DIVISION SPERRY-RAND CORPORATION,

Intervenor,

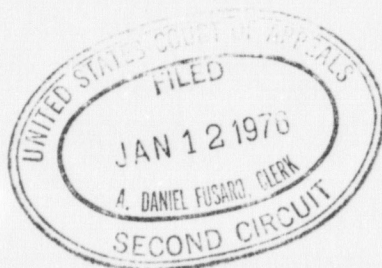
v.

LOCAL 445, INTERNATIONAL UNION OF
ELECTRICAL, RADIO & MACHINE WORKERS, AFL-CIO,

Respondent.

On Application for Enforcement of
a Supplemental Order of the National Labor Relations Board

APPENDIX



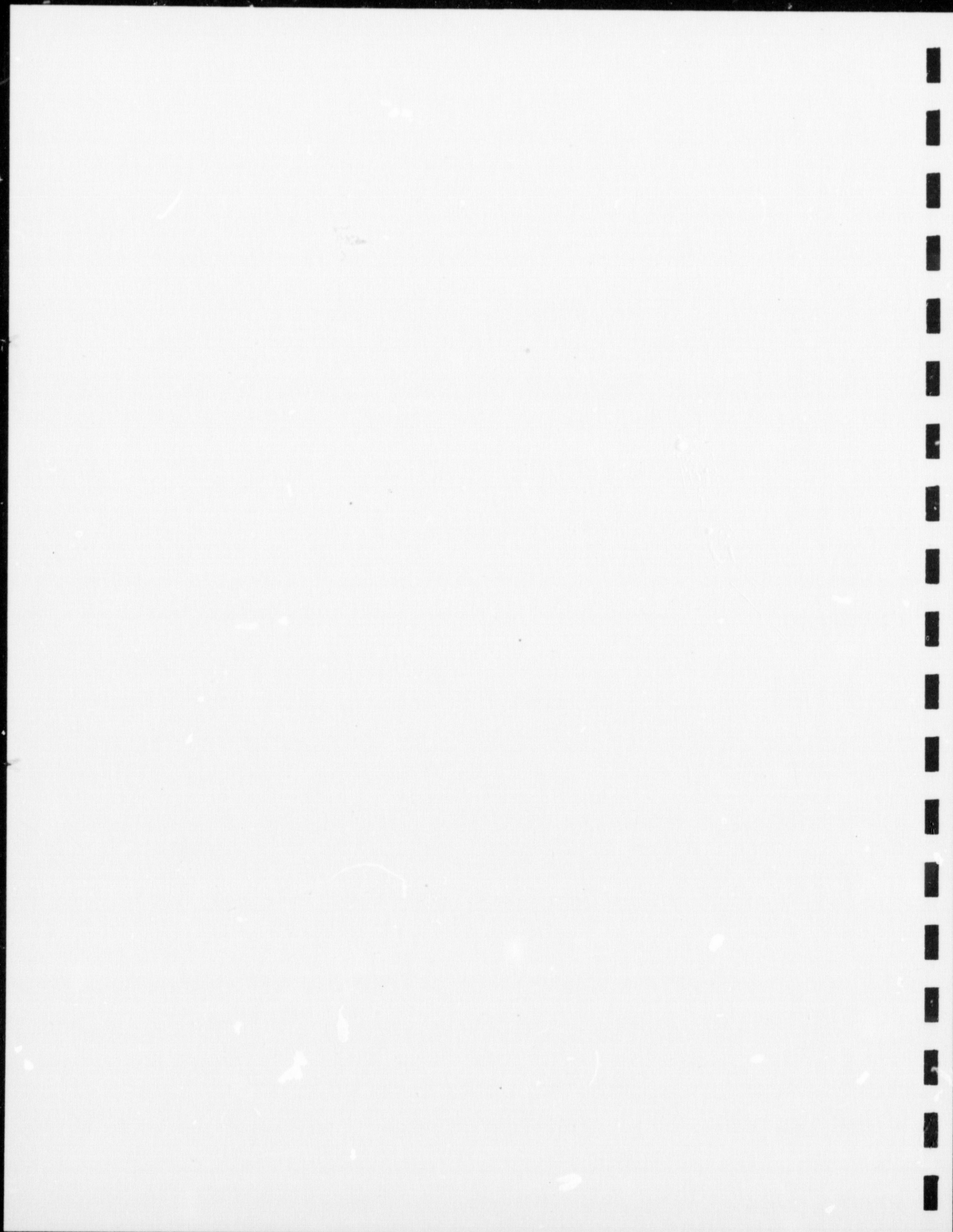
ELLIOTT MOORE,
Deputy Associate General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

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INDEX

	<u>Page</u>
SUPPLEMENTAL DECISION AND ORDER – Dated January 16, 1975	1
ORDER GRANTING MOTION IN PART AND DENYING IN PART AND AMENDING SUPPLEMENTAL DECISION AND ORDER – Dated June 4, 1975	8
ORDER DENYING A MOTION TO FURTHER AMEND AND MODIFY SUPPLEMENTAL DECISION AND ORDER – Dated August 28, 1975	13



216 NLRB No. 30

FJKP

D--9506

Great Neck, L. I., N. Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LOCAL 445, INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND
MACHINE WORKERS, AFL--CIO

and

Case 29--CB--1019

SPERRY SYSTEMS MANAGEMENT
DIVISION, SPERRY RAND CORPORATION

SUPPLEMENTAL DECISION AND ORDER

On March 5, 1973, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding, finding that the Respondent Union (hereafter the Union) had not committed the alleged violations of Section 8(b)(3) of the National Labor Relations Act, as amended, and ordering that the complaint be dismissed in its entirety.^{1/} Thereafter, Sperry Systems Management Division, Sperry Rand Corporation (hereafter Sperry), the Charging Party herein, filed a petition for review and the Board filed a cross-application for enforcement of the Order with the United States Court of Appeals for the Second Circuit.

^{1/} 202 NLRB 183

On February 15, 1974, the court issued its decision^{2/} vacating the Board's Order and remanding the case for further proceedings consistent with its opinion. The court held, contrary to the decision of a majority of the Board,^{3/} that the evidence and the applicable law established the alleged violation of Section 8(b)(3) of the Act and that the Board therefore erred in dismissing the complaint.

On May 6, 1974, the Board, through its Executive Secretary, notified the parties that the Board had decided to accept the remand of the court and further advised the parties that any of them that wished to do so might now file a statement of position with respect to the issues raised by the court's remand. Thereafter, by letter dated May 9, 1974, the Respondent set out its position with respect to the issues raised by the court's remand and also advised that it intended to petition the United States Supreme Court for a writ of certiorari in this matter. Subsequently, Respondent did file with the United States Supreme Court a petition for certiorari on the decision of the Court of Appeals for the Second Circuit, supra; and, on October 15, 1974, the Supreme Court denied that petition, 95 S. Ct. 55.

On October 30, 1974, the Board, through its Executive Secretary, again invited the parties to now state their position with respect to the issues raised by the court's remand. Responses were then filed by the General Counsel, by the Charging Party, and by the Respondent.

^{2/} 492 F. 2d 63.

^{3/} Members Kennedy and Penello dissented.

The Board has duly considered the decision of the Court of Appeals for the Second Circuit in light of the statements of position filed by the parties in this proceeding. Adopting, as the law of this case, the court's finding concerning the unlawful nature of Respondent's conduct as established by the record in this case, the Board now concludes that the alleged violations of Section 8(b)(3) of the Act, as described by the complaint, must be and they hereby are sustained.^{4/} The Board deems it appropriate, therefore, to issue a remedial order in the terms set out below.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Local 445, International Union of Electrical, Radio and Machine Workers, AFL--CIO, its officers, representatives, and agents, shall:

1. Cease and desist from:

(a) Using, or attempting to use, the grievance and arbitration procedures established by its collective-bargaining agreement with Sperry Systems Management Division, Sperry

^{4/} Contrary to Respondent's position, the Board finds nothing in the court's decision which permits the Board to entertain Respondent's request that the hearing be reopened so that Respondent may adduce further evidence in support of its defense to the alleged 8(b)(3) violation. Moreover, the motion is not granted for the additional reason that Respondent has not indicated that any evidence it now seeks to adduce was not available to it when the hearing on the complaint was held.

Rand Corporation, covering the certified unit of Metropolitan New York City area employees described below, for the purpose of compelling Sperry Rand to apply the substantive terms of that agreement to unrepresented technical employees engaged by that Company at its Vallejo, California, plant.

(b) In any other manner using the collective-bargaining process as established for the unit of the below-described employees as a means of protesting or otherwise determining the wages, hours, and working conditions of unrepresented employees at Sperry's Vallejo, California, facilities.

(c) Attempting in any like or related manner to expand its established collective-bargaining relationship beyond the bounds of the unit composed of the following employees:

All draftsmen, engineering aides, industrial illustrators, material lab assistants I and II, materials test coordinators, arts catalogue writers I and II, senior draftsmen, senior draftsman trainees, senior industrial illustrators, technical illustrators I, II, III, and IV, development technicians and engineering writers I and II, employed at Sperry's plants in Metropolitan New York City, including Nassau and Suffolk Counties, on temporary assignments wherever located from said plants; and/or temporary or permanent assignments from said plants to customer or vendor installations, wherever located, exclusive of all guards, watchmen, professional employees and supervisors as defined in the Act and all other employees not employed in the included classifications.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act:

(a) Post at its offices and meeting halls, copies of the attached notice marked "Appendix."^{5/} Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent Union's official representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Union and its agents to insure that such notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps the Respondent Union has taken to comply herewith.

Dated, Washington, D. C. JAN 16 1975

/s/ John H. Fanning
John H. Fanning, Acting Chairman

/s/ Howard Jenkins, Jr.
Howard Jenkins, Jr., Member

/s/ Ralph E. Kennedy
Ralph E. Kennedy, Member

/s/ John A. Penello
John A. Penello, Member

SEAL

NATIONAL LABOR RELATIONS BOARD

^{5/} In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT use, or attempt to use, the grievance and arbitration procedures established by our collective-bargaining agreement with Sperry Systems Management Division, Sperry Rand Corporation, covering the certified unit of Metropolitan New York City area employees described below, for the purpose of compelling Sperry Rand to apply the substantive terms of that agreement to unrepresented technical employees engaged by that Company at its Vallejo, California, plant.

WE WILL NOT in any other manner use the collective-bargaining process as established for the unit of the below-described employees as a means of protesting or otherwise determining the wages, hours, and working conditions of unrepresented employees at Sperry's Vallejo, California, facilities.

WE WILL NOT attempt in any like or related manner to expand our established collective-bargaining relationship beyond the bounds of the unit composed of the following employees:

All draftsmen, engineering aides, industrial illustrators, material lab assistants I and II, materials test coordinators, arts catalogue writers I and II, senior draftsmen, senior draftsman trainees, senior

industrial illustrators, technical illustrators I, II, III, and IV, development technicians and engineering writers I and II, employed at Sperry's plants in Metropolitan New York City, including Nassau and Suffolk Counties on temporary assignments wherever located from said plants; and/or temporary or permanent assignments from said plants to customer or vendor installations, wherever located, exclusive of all guards, watchmen, professional employees and supervisors as defined in the Act and all other employees not employed in the included classifications.

LOCAL 445, INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND MACHINE
WORKERS, AFL--CIO

(Labor Organization)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York 11241, Telephone 212--596--3535.

Great Neck, L.I., N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

ORDER GRANTING MOTION IN PART AND DENYING IN PART
AND
AMENDING SUPPLEMENTAL DECISION AND ORDER

On January 16, 1975, the National Labor Relations Board issued a Supplemental Decision and Order in the above-entitled proceeding,^{1/} in which, pursuant to the remand of the Court of Appeals for the Second Circuit,^{2/} it adopted the court's finding concerning the unlawful nature of Respondent's conduct and sustained the violations of Section 8(b)(3) of the Act, as alleged in the complaint. The Board therefore ordered the Respondent to cease and desist engaging in like or related unfair labor practices and to take certain affirmative action.

Thereafter, on February 7, 1975, the Respondent filed a Motion to Amend and Modify Supplemental Decision and Order requesting that paragraph 1(c) of the Order be: (1) amended by substituting the occupations set forth under Article 2 of the current and subsisting collective agreement between the parties for those referred to in the Board's certification; and (2) modified in certain other respects. On February 26, 1975, the Charging Party filed a statement in response to Respondent's motion stating that "the classifications listed in paragraph 1(c) of the Board's order may be conformed to those in the current

^{1/} 216 NLRB No. 30
^{2/} 492 F. 2d 63.

contract:" opposing the grant of the Union's motion to modify in all other respects; and requesting that "Benicia" be substituted for "Vallejo" in paragraphs 1(a) and (b) of the Board Order.

The Board having duly considered the matter,

IT IS HEREBY ORDERED that the Respondent's motion be, and it hereby is, granted with respect to the unit description and denied in all other respects.

IT IS FURTHER ORDERED that the Charging Party's request for the amendment to paragraphs 1(a) and (b) of the Board be denied.^{3/}

IT IS FURTHER ORDERED that the Supplemental Decision and Order be, and it hereby is, amended as follows:

1. Insert new footnote Number 4 at the end of the second full paragraph on page 2 of the slip opinion and add the following new footnote 4, renumbering present footnotes 4 and 5 accordingly:

4/ Subsequently the Respondent moved that the Board, in its Order, substitute for the certified unit description (set forth by the Administrative Law Judge, 202 NLRB at 187) the occupations set forth under Article 2 of the then current and subsisting collective agreement between the parties, and the

3/ In requesting that "Benicia" be substituted for Vallejo, the Charging Party asserts that it moved its Vallejo, California, facility to Benicia, California, since the date of the hearing and no longer operates any facility at Vallejo. The Board denies the requested substitution because the alleged relocation is not documented by the formal record. In so doing, the Board notes that, in any event, terms of the Board Order are broad enough to protect any interest of the Charging Party which underlies its substitution request.

Charging Party agreed that the classifications listed be so conformed. Accordingly, paragraph 1(c) of our Order herein reflects the unit description thus agreed upon.

2. Delete the word "certified" from paragraph 1(a) of the Order.
3. Substitute the following unit description for that now set forth in paragraph 1(c) of the Order:

Design draftsmen, senior draftsmen, draftsmen, drafting typists, diagrammer operators, editorial assistants, engineering writers I and II, parts catalog writers I and II, senior industrial illustrators, industrial illustrators, technical illustrator specialists, senior technical illustrators, technical illustrators, engineering aides, logistic assistants, material test coordinators, material laboratory assistants I and II, senior plant layout engineers, plant layout engineers, plant layout draftsmen and development technicians, employed at Sperry's plants in Metropolitan New York City, including Nassau and Suffolk Counties, on temporary assignments wherever located from said plant; and/or temporary or permanent assignments from said plants to customer or vendor installations, wherever located, exclusive of all guards, watchmen, professional employees and supervisors as defined in the Act and all other employees not employed in the included classifications.

4. Substitute the attached "Notice to Members" for the notice attached to the Supplemental Decision and Order.

IT IS FURTHER ORDERED that the Supplemental Decision and Order, as printed, shall appear as hereby amended.

Dated, Washington, D. C. , June 4, 1975.

George A. Leet

/s/

Associate Executive Secretary

APPENDIX

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT use, or attempt to use, the grievance and arbitration procedures established by our collective-bargaining with Sperry Systems Management Division, Sperry Rand Corporation, covering the certified unit of Metropolitan New York City area employees described below, for the purpose of compelling Sperry Rand to apply the substantive terms of that agreement to unrepresented technical employees engaged by that Company at its Vallejo, California, plant.

WE WILL NOT in any other manner use the collective-bargaining process as established for the unit of the below-described employees as a means of protesting or otherwise determining the wages, hours, and working conditions of unrepresented employees at Sperry's Vallejo, California, facilities.

WE WILL NOT attempt in any like or related manner to expand our established collective-bargaining relationship beyond the bounds of the unit composed of the following employees:

Design draftsmen, senior draftsmen, draftsmen, drafting typists, diagrammer operators, editorial assistance, engineering writers I and II, parts catalog writers I and II, senior industrial illustrators, industrial illustrators, technical illustrator specialists, senior technical illustrators, technical illustrators, engineering aides, logistic assistants, material test coordinators, material laboratory assistants I and II, senior plant layout engineers, plant layout engineers, plant layout draftsmen and development technicians, employed at Sperry's plants in Metropolitan New York City, including Nassau and Suffolk Counties, on temporary assignments wherever located from said plant; and/or temporary or permanent assignments from said plants to customer or vendor installations, wherever located, exclusive of all guards, watchmen, professional employees and supervisors as defined in the Act and all other employees not employed in the included classifications.

LOCAL 445, INTERNATIONAL UNION
OF ELECTRICAL, RADIO AND MACHINE
WORKERS, AFL--CIO

(Labor Organization)

Dated _____ By _____
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This is an official notice and must not be defaced by anyone.

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Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Brooklyn, New York 11241, Telephone 212-596-3535.

Great Neck, L.I., N. Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

* * * * *

ORDER DENYING A MOTION TO FURTHER AMEND
AND MODIFY SUPPLEMENTAL DECISION
AND ORDER

On February 7, 1975, Respondent filed a Motion to Amend and Modify paragraph 1(c) of the Supplemental Decision and Order which the Board had issued on January 16, 1975, in the above-entitled proceeding. On June 4, 1975, the Board issued an Order granting that motion in part and denying it in part. That Order provided that the unit description in paragraph 1(c) of the Supplemental Decision and Order be amended by substituting the occupations set forth under Article II of the current and subsisting collective-bargaining agreement between the parties for those referred to in the Board's certification;^{1/} and that the motion for modification be denied in all other respects.^{2/}

^{1/} In accord with the Respondent's request, in which the Charging Party acquiesced, the amended unit description followed the language in a copy of the collective-bargaining agreement attached to the Respondent's motion.

^{2/} In that same Order the Board also denied the Charging Party's request, as made in its statement in opposition to the Respondent's February 7, 1975, motion, for an amendment to paragraph 1(a) and (b) of the Board's Order.

By a document dated July 3, 1975, the Respondent filed a Motion to Further Amend and Modify the Board's Supplemental Decision and Order. By this motion it seeks (1) a further amendment of the unit description as now appearing in paragraph 1(c) of the Amended Supplemental Decision and Order dated June 4, 1975, and (2) a modification of other provisions in that part of the Order.

In support of its request for further amendment of the unit description in the Board's Order, Respondent claims that, as a result of negotiations occurring since the execution date of its collective-bargaining agreement, the parties agreed to add certain classifications to the unit and to delete certain others. To establish the factual basis of its claim, it attaches to its motion an affidavit signed by Henry Zylla, President of Local 445 of the IUE, together with copies of certain documents variously dated in 1971, 1972, and 1973 purporting to reflect the supplemental agreements of the parties amending the contractual unit definition. In support of its request for modification of other parts of the Board Order, Respondent alleges that the provisions it seeks to modify are subject to an interpretation which would limit its right to seek changes in the unit description which might be made necessary by changing conditions.

By letter dated July 17, 1975, the Charging Party filed a statement in opposition to the Respondent's motion of July 3, 1975, alleging, in part, that the "sole purpose" of that motion is to "delay enforcement proceedings in the United States Court of Appeals."

The Board, having duly considered the matter has decided to deny the Respondent's motion for the reasons set out below.

1. The portion of the motion in which requests that certain changes be made in the classifications now listed in the unit description in paragraph 1(c) of the Board's Order is explicitly opposed by the Charging Party and appears in effect to be based on the alleged negotiated agreements which are not now part of the formal record and which, in any event, appear to have been made at dates preceding the February 7, 1975, motion referred to above, and thus, do not constitute matters which previously were not known to Respondent.

2. The request for additional modifications to paragraph 1(c) of the Board's Order is a repetition, in effect, of the request contained in the earlier motion filed by Respondent on February 7, 1975. It contains nothing not previously considered by the Board in its deliberations on the matter.^{3/}

Accordingly, IT IS HEREBY ORDERED that the Respondent's Motion to Further Modify the Board's Supplemental Decision and Order be, and the same hereby is, denied.

Dated, Washington, D. C. , August 28, 1975.

George A. Leet
Associate Executive Secretary

^{3/} Should changes in conditions occur which, in Respondent's view, require amendment of the unit definition, Respondent, of course, has available to it the unit clarification procedures of the Board. The Board's Order, which speaks for itself, in no way limits Respondent's access to these clarification procedures.

United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

and

SPERRY SYSTEMS DIVISION SPERRY-RAND
CORPORATION

Intervenor

v.

LOCAL 445, INTERNATIONAL UNION OF ELECTRICAL
UNION, RADIO & MACHINE WORKERS, AFL-CIO,

Respondent.

No. 75-4237

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the
APPENDIX in the above-entitled case, on
the following counsel of record, this 9 day of January 1976.

Messrs. Poletti, Freidin, Prashker
Feldman & Gartner
Attn: Eric Rosenfeld, Herbert Prashker and
Richard Schoolman, Esqs.
777 Third Avenue
New York, New York 10017

Messrs. Vladeck, Elias, Vladeck & Lewis
Attn: Everett E. Lewis and
Sylvan H. Elias, Esqs.,
1501 Broadway
New York, New York 10036

Elliott Moore, Esq.,
Deputy Associate General Counsel
National Labor Relations Board
Washington, D.C. 20570

CASILLAS PRESS, INC.

1717 K Street, N. W.
Washington, D. C. 20036
Telephone: 223-1220

Subscribed and Sworn to before me this